

## CHECKLIST ENVIRONMENTAL ASSESSMENT

<b>Project Name:</b>	Passmore Easement Application
<b>Proposed Implementation Date:</b>	Winter / Spring 2017
<b>Proponent:</b>	Gary L. Passmore, 809 1 <sup>st</sup> Street NE, Choteau, MT 59422
<b>Location:</b>	W2SW4, Section 10, T23N, R8W-0.98 Acres
<b>County:</b>	Teton
<b>Trust:</b>	Capitol Buildings (CB)

### I. TYPE AND PURPOSE OF ACTION

The proponent has applied for an easement across state land to use an existing road for ingress and egress to approximately 30 acres of private land and a cabin located in SW¼NE¼, Sec 17, T23N, R8W. The proposed easement location is identical and overlays the same "public access" road established under a Consent Decree that was approved the State Board of Land Commissioners on July 20, 2015 (*Salmond Ranch Company, Inc., v. All Known Persons, et al.*, Cause No. DV-12-45, Montana Ninth Judicial District County, Teton County, Montana). The applicant gains access to the state land in Section 10 through a private easement secured from the Salmond Ranch Company (Dated September 23, 2016 filed Teton County Courthouse, Deed Book 148 Page 608). This easement application is intended to be used year around for all lawful purposes. The existing road cross approximately 2,654.69' of state land (0.98 acres) and terminates at the public parking lot area. The proponent is concurrently applying for a historic right of way pursuant to 77-1-132- MCA (which is exempt from MEPA review) from the public parking area to the subject private property and cabin. The proposed easement will be 16' wide and all portions are along the existing road.

### II. PROJECT DEVELOPMENT

#### 1. PUBLIC INVOLVEMENT, AGENCIES, GROUPS OR INDIVIDUALS CONTACTED:

*Provide a brief chronology of the scoping and ongoing involvement for this project.*

Public Scoping – (maps, scoping letter and comments are attached)

- Date
  - January 19, 2016 to February 24, 2017
- Public Scoped
  - Gary Passmore, easement applicant
  - Adjacent land owners and State Land lessee's
  - Russel County Sportsmen
  - Randall Knowles
  - Stutz & Passmore, Marion C. Passmore, Attorney for Gary Passmore
  - Paul Beard,
- Agencies Scoped
  - Teton County Attorney, Joe Cobble
  - Teton County Commissioners
  - Montana Fish, Wildlife and Parks
- Comments Received
  - How Many: During the 30 day comment period, DNRC received a total of 22 written comments received via email and 1 phone call.
  - Comment Summary:
    - 19 comments were in support of issuing the easement.

- 1 comment from MT FWP from the local biologist and game warden stated that FWP did not have any specific concerns or comments with issuing the easement.
- 2 comments had specific concerns regarding:
  - general scope of the easement
  - who can use the easement
  - motorized vehicle use / trespassing off of the easement route
  - impact of the easement on surrounding land recreational uses.

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## 2. OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION, LIST OF PERMITS NEEDED:

DNRC is not aware of any other agencies with jurisdiction or other permits needed to complete this project.

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## 3. ALTERNATIVES CONSIDERED:

Alternative A (No Action) – Deny the proponents easement application.

Alternative B (the Proposed action) –Approve the proponents easement application using the DNRC-TLMD mitigation measures to minimize adverse environmental, management and social impacts.

## III. IMPACTS ON THE PHYSICAL ENVIRONMENT

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" If no impacts are identified or the resource is not present.*

### 4. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:

*Consider the presence of fragile, compactable or unstable soils. Identify unusual geologic features. Specify any special reclamation considerations. Identify any cumulative impacts to soils.*

Soils and geology in this area are generally suitable for road use. Soils are rocky / gravelly and well drained. The topography is gently rolling to flat. Soil and topography are well suited for a low standard 16' wide road. The proponent will use an existing road and no new road improvements will occur. The existing road surface was previously improved with gravel in low areas and 3 culverts for water drainage. No additional grading, graveling or other improvements are needed for this proposed easement.

No cumulative effects to the soils are anticipated.

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### 5. WATER QUALITY, QUANTITY AND DISTRIBUTION:

*Identify important surface or groundwater resources. Consider the potential for violation of ambient water quality standards, drinking water maximum contaminant levels, or degradation of water quality. Identify cumulative effects to water resources.*

There are no water rights associated with this tract. 3 culverts were installed in 2015 along the road way to allow for intermittent water flow from 2 irrigation ditches and King Creek. No impacts to downstream water quality or downstream beneficial uses are anticipated resulting from the use of the road or the issuance of the easement. No other important surface or groundwater resources will be impacted by the proposed easement.

Other water quality and/or quantity issues will not be impacted by the proposed action.

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### 6. AIR QUALITY:

*What pollutants or particulate would be produced? Identify air quality regulations or zones (e.g. Class I air shed) the project would influence. Identify cumulative effects to air quality.*

The proposed easement will not consist of any ground disturbing activities. No immediate or cumulative effects to air quality are anticipated.

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## **7. VEGETATION COVER, QUANTITY AND QUALITY:**

*What changes would the action cause to vegetative communities? Consider rare plants or cover types that would be affected. Identify cumulative effects to vegetation.*

The vegetation within the proposed project area consists primarily of native rangeland grasses, forbs, and shrubs. An existing road will be utilized and no road improvements are planned, therefore, no impact to the existing vegetation will occur. Noxious and annual weeds within the proposed construction areas are a concern, but this concern will be mitigated as the DNRC is responsible for controlling weeds along the road as stipulated in the Consent Decree. In addition, standard language in DNRC easements state that "the grantee shall comply with the Montana County Noxious Weed Management Act" which requires control of all noxious weeds along the roadway. Cumulative impacts on the vegetative resources are not expected

A review of Natural Heritage data through the NRIS was conducted for T23N, R8W: There were no plant species of concern noted or potential species of concern noted on the NRIS survey.

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## **8. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:**

*Consider substantial habitat values and use of the area by wildlife, birds or fish. Identify cumulative effects to fish and wildlife.*

The area is considered excellent wildlife habitat. These tracts provide habitat for a variety of big game species (grizzly bear, black bear, elk, mule deer, whitetail deer, and pronghorn antelope), predators (wolf, coyote, fox, and badger), upland game birds (sharp tail grouse, mountain grouse), other non-game mammals, raptors and various songbirds. The proposal does not include any land use change or surface disturbances which would yield changes to the wildlife habitat. The proposed action will not impact wildlife forage, cover, or traveling corridors. Nor will this action change the juxtaposition of wildlife forage, water, or hiding and thermal cover. The proposed action will not have long-term negative effects on existing wildlife species, wildlife habitat, or aquatic habitats.

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## **9. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:**

*Consider any federally listed threatened or endangered species or habitat identified in the project area. Determine effects to wetlands. Consider Sensitive Species or Species of special concern. Identify cumulative effects to these species and their habitat.*

The state land parcel is located in the NCD grizzly bear recovery zone. Road use from the applicant to access a private cabin is expected to be light. This action is not expected to impact grizzly bears and/or grizzly bear habitat because no construction activities or habitat altering activities are planned. Other threatened or endangered species, sensitive habitat types, or other species of special concern or potential species of concern will not be impacted by proposal.

A review of Natural Heritage data through the NRIS was conducted for T23N, R8W. There were seven animal species of concern, zero potential species of concern, and zero special status species noted on the NRIS survey: Mammals-Grizzly Bear, Wolverine, Canada Lynx, and Fisher. Birds-Sprague's Pipit and Golden Eagle. Fish-Westslope Cutthroat Trout. The proposed easement is not expected to impact threatened or endangered species, sensitive habitat types, or other species of special concern or potential species of concern.

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## **10. HISTORICAL AND ARCHAEOLOGICAL SITES:**

*Identify and determine effects to historical, archaeological or paleontological resources.*

A Class III cultural and paleontological resources inventory was conducted of the area of potential effect on state land. Despite a detailed examination, no cultural or fossil resources were identified and no additional archaeological or paleontological investigative work is recommended. The proposed project will have No Effect to Antiquities as defined under the Montana State Antiquities Act. A cultural and paleontologic resources inventory report has been prepared and is on file with the DNRC, (Helena) and the Montana State Historic Preservation Office (Helena):

Rennie, Patrick J.

2017 A Cultural and Paleontologic Resources Inventory of A Proposed Primitive Road and Parking Area at the Rocky Mountain Front. Report prepared for the DNRC

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**11. AESTHETICS:**

*Determine if the project is located on a prominent topographic feature, or may be visible from populated or scenic areas. What level of noise, light or visual change would be produced? Identify cumulative effects to aesthetics.*

The state land does provide unique scenic qualities of the Rocky Mountain Front in the Deep Creek area. The proposed easement will utilized an established road corridor and will not impact the overall aesthetics of the area.

No direct or cumulative effects to aesthetics are anticipated.

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**12. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:**

*Determine the amount of limited resources the project would require. Identify other activities nearby that the project would affect. Identify cumulative effects to environmental resources.*

The demand on environmental resources such as land, water, air, or energy will not be affected by the proposed action. The proposed action will not consume resources that are limited in the area. There are no other projects in the area that will affect the proposed action.

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**13. OTHER ENVIRONMENTAL DOCUMENTS PERTINENT TO THE AREA:**

*List other studies, plans or projects on this tract. Determine cumulative impacts likely to occur as a result of current private, state or federal actions in the analysis area, and from future proposed state actions in the analysis area that are under MEPA review (scoped) or permitting review by any state agency.*

There are no other projects or plans being considered on the tracts listed on this EA.

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IV. IMPACTS ON THE HUMAN POPULATION
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| <ul style="list-style-type: none"><li>• RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.</li><li>• Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.</li><li>• Enter "NONE" If no impacts are identified or the resource is not present.</li></ul> |
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**14. HUMAN HEALTH AND SAFETY:**

*Identify any health and safety risks posed by the project.*

The proposed easements will not impact human health or safety in the area.

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**15. INDUSTRIAL, COMMERCIAL AND AGRICULTURE ACTIVITIES AND PRODUCTION:**

*Identify how the project would add to or alter these activities.*

The proponent will use an existing road and no road improvements will occur. The use of this existing road will not add to or alter agricultural activities or production on the lease.

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**16. QUANTITY AND DISTRIBUTION OF EMPLOYMENT:**

*Estimate the number of jobs the project would create, move or eliminate. Identify cumulative effects to the employment market.*

The proposed action will not create any jobs or add any employment in the area.

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**17. LOCAL AND STATE TAX BASE AND TAX REVENUES:**

*Estimate tax revenue the project would create or eliminate. Identify cumulative effects to taxes and revenue.*

There are no direct or cumulative effects to taxes or revenue resulting from the proposed easement.

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**18. DEMAND FOR GOVERNMENT SERVICES:**

*Estimate increases in traffic and changes to traffic patterns. What changes would be needed to fire protection, police, schools, etc.? Identify cumulative effects of this and other projects on government services*

Increased law enforcement and additional DNRC inspections in the area will likely be needed. There will be no other excessive stress placed on the existing infrastructure as a result of the easement.

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**19. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:**

*List State, County, City, USFS, BLM, Tribal, and other zoning or management plans, and identify how they would affect this project.*

The proposed action is in compliance with State and County laws. No other management plans are in effect for the area.

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**20. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:**

*Identify any wilderness or recreational areas nearby or access routes through this tract. Determine the effects of the project on recreational potential within the tract. Identify cumulative effects to recreational and wilderness activities.*

This tract of state land generally has a high recreational value. The proposed easement location is identical and overlays the same existing "public access" road right of way established under a Consent Decree that was approved the State Board of Land Commissioners on July 20, 2015 (*Salmond Ranch Company, Inc., v. All Known Persons, et al.*, Cause No. DV-12-45, Montana Ninth Judicial District County, Teton County, Montana). Public access on this right of way is allowed from July 1 to December 31 of each year as outlined in the Consent Decree. The public access road terminates at a parking lot located in the northwest corner of section 15, T23N, R8W, where access to state and BLM lands beyond the parking lot is by non-motorized travel (foot, horseback, or other non-motorized travel). The proponents then follow a two-track road beyond the public parking area to their private property. The general public is prevented from driving on the road beyond the parking area at all times. The easement application in conjunction with the historic easement will allow the proponent motorized access to their private property. Concerns were received during scoping regarding the potential conflict arising between the applicant's motorized use and the public's non-motorized use of the road beyond the parking area.

Below is a summary of the concerns and mitigation measures addressing the identified concerns.

Scope of the easement: Language within DNRC easements contain specific rights granted to the easement holder. In this case the specific rights granted would be ingress and egress only to private property (approximately 30 acres) and a cabin owned by the applicant. In 2006 the Montana Board of Land Commissioners adopted an "access road easement policy" that provides guidance to easement applicants and the DNRC. This policy states under – **"Private Access for Residential Purposes (Non Historic) Easements** - "Any such easement properly applied for and granted by the Board shall allow access to the applicable number of residences or vacant residential lots as applied for, including all garages, sheds, barns or other associated outbuildings. Use of the road for other purposes, such as recreational purposes (e.g. hunting, fishing, outfitting), routine maintenance and property management (including the ability to clear and/or thin timber and other natural fuels to create defensible space) is also implied... Use of any portion of the road on State land for any purpose other than ingress/egress as stated herein, including use in conjunction with recreational activities conducted on state land, is subject to the provisions of ARM 36.25.149 and authorization by the Department. Any unauthorized use of the road on State land by the applicant and/or their invitees and guests may result in mitigated actions being taken by the Department as deemed necessary, including potential loss of the rights granted. Guests and invitees of the applicant traveling in separate vehicles shall have proof of authorization from the applicant for ingress and egress. Maintenance for the road across state land will be the responsibility of the applicant proportionate to their share of the use of the road."

Mitigations:

DNRC will mitigate this concern by adding additional language into the easement document and clearly communicate to the applicant the scope of the easement. The following language will be recommended to the land board to be inserted into the easement. "Use of any portion of the road across state land described above



for any purpose other than ingress / egress as stated herein, including use in conjunction with recreational activities conducted on state land, is subject to the provision of ARM 36.25.149 and authorization by Grantor”

Who can use the easement: In accordance with the 2006 access road easement policy adopted by the Montana Board of Land Commissioners, “The ability to travel upon the road across state land is extended to the applicant’s invitees and guests, but only to the extent of allowing ingress and egress across state land for the purpose of accessing applicant’s private lands”. DNRC will mitigate this concern by adding additional language and stipulations into the easement document and clearly communicate to the applicant regarding scope of the easement. In order to insure that the easement is used only to access the applicant’s private property, guests and invitees of the applicant traveling in separate vehicles shall have proof of authorization from the applicant for ingress and egress.

Motorized vehicle use / trespassing off of the easement road: As describe above, DNRC easements are issued for specific uses which are clearly defined on the ground by survey or historical use. Deviation from the identified route is prohibited. Any unauthorized use would be enforced by the Department and/or the appropriate law enforcement agency (Montana FWP law enforcement or Teton County Sheriff’s office). To help mitigate this concern, DNRC will increase signage in the area and clearly communicate the scope of the easement to the applicant.

Impact of the easement on surrounding land and recreational uses. Although conflicts with general recreationalist cannot be completely avoided, area signage and complete understanding of the scope of the easement should help mitigate these concerns. In the end, if problems persist, the Board of Land Commissioners can revoke the easement or DNRC could designate the road open for recreational purposes beyond the parking lot area. In general, the action is not expected to greatly impact general recreational activities on this state tract.

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#### **21. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:**

*Estimate population changes and additional housing the project would require. Identify cumulative effects to population and housing.*

The proposal does not include any changes to housing or developments.

No direct or cumulative effects to population or housing are anticipated.

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#### **22. SOCIAL STRUCTURES AND MORES:**

*Identify potential disruption of native or traditional lifestyles or communities.*

There are no native, unique or traditional lifestyles or communities in the vicinity that would be impacted by the proposal.

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#### **23. CULTURAL UNIQUENESS AND DIVERSITY:**

*How would the action affect any unique quality of the area?*

The proposed action will not impact the cultural uniqueness or diversity of the area.

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#### **24. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:**

*Estimate the return to the trust. Include appropriate economic analysis. Identify potential future uses for the analysis area other than existing management. Identify cumulative economic and social effects likely to occur as a result of the proposed action.*

A \$50.00 application fee was collected. The easement on the Capitol Buildings trust land will encumber 0.980 acres @ a recommended land value of \$1,900.00 / acre for a total of \$1,862.00. The applicant has prepaid for this easement in full (\$1,862.00), along with adjacent historic easements (\$5,783.60) which total \$7,645.60.

EA Checklist Prepared By:	<b>Name:</b> Tony Nickol, Erik Eneboe, Martin Balukas	<b>Date:</b> March 21, 2017
	<b>Title:</b> Land Use Specialist, Conrad Unit, Central Land Office Conrad Unit Manager, Central Land Office Trust Lands Manager, Central Land Office	

## V. FINDING

25. ALTERNATIVE SELECTED: *Alternative B*

26. SIGNIFICANCE OF POTENTIAL IMPACTS: *The completion of this checklist EA did not identify impacts of significance.*

27. NEED FOR FURTHER ENVIRONMENTAL ANALYSIS:

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EIS

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More Detailed EA

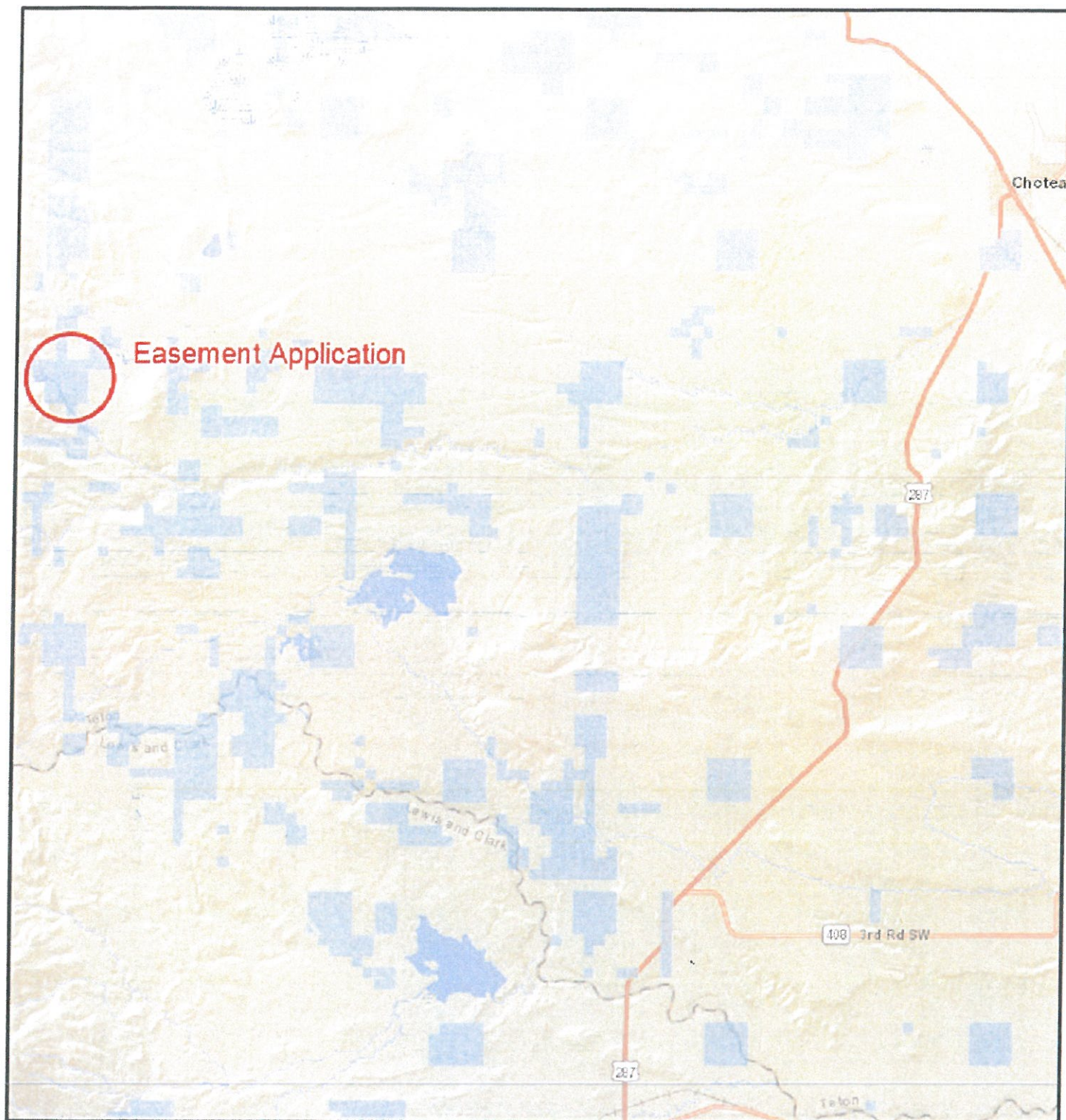
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No Further Analysis

EA Checklist Approved By:	<b>Name:</b> Hoyt Richards
	<b>Title:</b> Area Manager, Central Land Office
<b>Signature:</b> <i>Hoyt R. Richards</i>	
<b>Date:</b> <i>March 22-17</i>	







Jan 25, 2017



## Passmore Easement Application



Printed: Jan 25, 2017





T23N, R8W  
Teton County, Montana

